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IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

GENERAL ADMINISTRATION OF CIVIL AVIATION OF THE PEOPLES REPUBLIC OF CHINA, a/k/a CIVIL AVIATION ADMINISTRATION OF THE PEOPLES REPUBLIC OF CHINA or CAAC,

Petitioner,

– against –

LOUISE AGNES BARKANIC, Individually and as Personal Representative of the Estate of PETER PATRICK BARKANIC, Deceased,

GLADYS PATRICIA FOX, Individually and as Personal Representative of the Estate of DONALD BRANFORD FOX, Deceased,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether an express waiver of sovereign immunity by a foreign sovereign-owned airline in a Foreign Air Carrier Permit is a treaty agreement that the airline retains sovereign immunity for all other claims, in contravention of the Foreign Sovereign Immunities Act?

2. Whether a United States District Court has subject matter jurisdiction under the Foreign Sovereign Immunities Act over a foreign sovereign-owned airline doing business in the United States for claims arising out of a fatal flight for which the American decedents contracted and paid in the United States?

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1987

No. _____

GENERAL ADMINISTRATION OF CIVIL AVIATION OF THE PEOPLES REPUBLIC OF CHINA, a/k/a CIVIL AVIATION ADMINISTRATION OF THE PEOPLES REPUBLIC OF CHINA OR CAAC.

Petitioner,

-vs.-

LOUISE AGNES BARKANIC, Individually and as Personal Representative of the Estate of PETER PATRICK BARKANIC, Deceased, and

GLADYS PATRICIA FOX, Individually and as Personal Representative of the Estate of DONALD BRANFORD FOX, Deceased,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

STATEMENT OF THE CASE

Petitioner is the commercial airline of the People's Republic of China, and does significant business in the United States through its own employees and through agents. Contracts for air transportation between Nanjing and Beijing for Peter Barkanic and Donald Fox, American citizens residing in the United States, were made and paid for in Washington, D.C. The U.S.-issued tickets were honored by CAAC. Decedents died in the crash of the CAAC aircraft at the intermediate stop of Jinan.

The Court is respectfully referred to the first four paragraphs of the opinion of the Court of Appeals, which are incorporated herein by reference (Petition, pages 2a-4a).

SUMMARY OF ARGUMENT

The Court of Appeals properly applied the Foreign Sovereign Immunities Act to the facts of this case, and found a sufficient nexus between the contracts of carriage made in the United States with the claims for wrongful death to assert jurisdiction. The airline did not raise the Air Services Agreement below because it is silent as to sovereign immunity. The Foreign Air Carrier Permit contains a waiver, not a retention, of sovereign immunity. The Courts of Appeal agree about the application of the Foreign Sovereign Immunities Act. An affirmance of the District Court would have played havoc with settled law under the Warsaw Convention and the Foreign Sovereign Immunities Act.

REASONS WHY THE WRIT SHOULD NOT BE GRANTED

I. THIS COURT SHOULD NOT CONSIDER THE ARGUMENT THAT THE BILATERAL TREATY BARS ASSERTION OF JURISDICTION BY UNITED STATES COURTS UNDER THE FOREIGN SOVEREIGN IMMUNITIES ACT.

1. The Petitioner Failed to Raise This Argument Before the Court of Appeals Because The Bilateral Treaty Does Not Address or Govern the Questions of Immunity and Jurisdiction; the FSIA Does.

The Petitioner asserts that the Air Transport Services Agreement ("Bilateral Treaty"), "...defines the scope of [the P.R.C.'s] relinquishment of sovereign immunity..." (Questions Presented, I) and thus bars the assertion of jurisdiction over these claims by United States Courts under the Foreign Sovereign Immunities Act ("FSIA").

The Court of Appeals did not consider this argument for the simple reason that the Petitioner did not make it in either court below, and is raising it here for the first time.

CAAC raises this specious argument as a ploy to attract the attention of the Court. This case does not even colorably involve the interpretation of the Bilateral Treaty.

In the Court of Appeals, the Petitioner agreed with the Respondents that, "It is well settled that the Foreign Sovereign Immunities Act ... is the sole basis for federal subject matter and personal jurisdiction over actions against foreign sovereigns or their entities" and that CAAC was a commercial agency or instrumentality of

the People's Republic of China ("P.R.C."). (Brief for Petitioner-Appellee at 10).

In regard to the Bilateral Treaty, CAAC only stated, correctly, that its purpose was to "facilitate international air transportation". CAAC never asserted that the Bilateral Treaty set the only standard - or any standard -against which claims of immunity are to be judged, or that it dealt with the issue of sovereign immunity at all.

The Treaty does not deal with sovereign immunity at all.

Petitioner cites only the vaguest language in the Preamble of the Treaty as support for its novel argument: "develop mutual relations between their countries, to enhance friendship between

their peoples, and to facilitate international air transport...observing the principles of mutual respect for independence and sovereignty, non-interference in each other's internal affairs, equality and mutual benefit and friendly cooperation." Petition, page 8. This is simply diplomatic boilerplate found in every Bilateral Treaty dealing with air rights.

Finding no support in the language of the Treaty, Petitioner attempts by sleight of hand to elevate to the status of a Treaty provision the standard waiver language of the Foreign Air Carrier Permit issued by the Department of Transportation to CAAC and to each

foreign airline. /1.

CAAC then argues, invalidly, that since the express waiver in the Permit does not cover the claims in this action, it has retained immunity for these claims, and indeed for all other claims.

The Bilateral Treaty deals only with foreign air transportation between the United States and the P.R.C. It is not a Treaty which deals with the extent to which each country will or will not grant immunity to the commercial activities of the other. Nowhere in the

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/1. Each of more than 150 foreign airlines operates here under such a Treaty containing similar boilerplate and must execute such a Permit containing identical waiver language before it can begin operations here. (DOT

Treaty does the P.R.C. reserve all claims to sovereign immunity for its commercial agencies, other than those which it expressly waives.

If the Treaty's silence is construed as an express retention of sovereign immunity for those other operations, and if the Treaty is adjudged to be in derogation of prior federal law, i.e., the FSIA, all foreign sovereign-owned airlines which sell their services in the United States will be granted immunity for thousands of claims now

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Order to Show Cause, Joint Appendix ("JA") at A-320a).

CAAC names 17 and mentions 133 other such foreign airlines, the vast majority of which are foreign sovereign-owned (*Id.* at A-321a), who so operate in the United States in its brief below (page 32).

considered to be within the ambit of the FSIA.

But the FSIA was clearly designed to encompass the commercial acts of sovereigns, including the sale of services, House Judiciary Committee, *Jurisdiction of United States Courts in Suits Against Foreign States*, H.R. Rep. No. 1487, 94th Cong., 2d Sess. 18, reprinted in [1976] U.S. Code Cong. & Admin. News 6604, 6605 ("House Report"). The sale of airline tickets and the solicitation of passengers for a common carrier by air like CAAC are "commercial activities". *Sugarman v. Aeromexico, Inc.*, 626 F.2d 270 (3rd Cir. 1980); *Arango v. Guzman Travelers Advisors Corp.*, 621 F.2d 1371, 1373 (5th Cir. 1980). And when the statute was passed, each foreign airline was operating here under the authority of a

similar Bilateral Treaty and Foreign Air Carrier Permit.

The Bilateral Treaty says nothing about sovereign immunity. Rather, the Foreign Air Carrier Permit requires, as a precondition of operations rights here, an express waiver of any asserted claim of immunity for claims arising out of foreign air transportation. /2.

CAAC attempts, speciously, to incorporate the Permit into the Treaty, and then speciously and illogically draws inferences from the Permit's waiver language which are wholly unsupportable.

/2. The Treaty is also silent about the requirement for execution of the Permit. If the premise that the Treaty sets forth the

Essentially, it says that since it has not expressly waived its immunity, it retains it: "CAAC may raise the defense of sovereign immunity with respect to operations which are not under the permit". Petition, page 9.

The Petitioner did not make this specious argument to the Court of Appeals, and this Court should not consider it in deciding whether to grant the Petition for Certiorari.

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standards of immunity is correct, the Permit's waiver requirement must be unenforceable. But Petitioner does not follow the logic of its premise *ad absurdum*.

2. The Court of Appeals Correctly Applied the FSIA in its Decision.

A. *All* claims of immunity made by the commercial airline, CAAC, are to be judged by the Courts of the United States under the standards of the FSIA, by decision of the Congress of the United States, indisputably empowered by Article I of the Constitution. *Verlinden B.V. v. Central Bank of Nigeria*, 461 U.S. 480, 493-494 (1983).

Disagreeing with *Verlinden, supra*, the Petitioner puts forth the proposition that:

1) CAAC is immune from all claims unless it has expressly waived immunity;

2) CAAC has only waived immunity for claims arising out of foreign air transportation;

3) these claims do not arise from foreign air transportation;

4) therefore, CAAC is immune from suit in the United States on these claims.

This is a false conclusion, since it flows from a false major premise: the Petitioner is not immune from all claims unless it expressly waives immunity. Such an argument simply ignores the existence of the FSIA, which codified the restrictive theory of sovereign immunity, i.e., the principle, long known to American law, that a sovereign will not be granted immunity for its commercial acts, and "[s]hall be liable in the same manner and to the same extent as a private individual under like circumstances". 28 U.S.C. sec. 1606; *Verlinden, supra*, 461 U.S. at 488-489.

The correct analysis is:

1) the Petitioner is only immune from those claims which do not fall within the "exceptions" to immunity of the FSIA, i.e., cases,

-in which the Petitioner has implicitly or expressly waived its immunity, /3; *OR*

-where the action is "based upon", i.e., has a nexus with, a commercial activity of CAAC in the United States (the only ground of decision below), /4; *OR*

-where the action is "based upon" an act performed in the United States in connection with a commercial activity of CAAC elsewhere, /5; *OR*

/3. 28 U.S.C. sec. 1605 (a)(1)

/4. 28 U.S.C. sec. 1605 (a)(2)(Clause One)

/5. 28 U.S.C. sec. 1605 (a) (2) (Clause Two)

-where the actions of CAAC elsewhere have had a direct effect in the United States, /6; *OR*

-several other categories of acts, not relevant to this discussion, /7.

2) these claims arise from acts having a "nexus" with commercial activity of CAAC in the United States;

3) therefore, the Petitioner is NOT immune.

The FSIA has several categories of cases which do not warrant immunity: express waiver is only one of them.

The waiver condition of the Foreign Air Carrier Permit subtracts from the

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/6. 28 U.S.C. sec. 1605 (a) (2)(Clause Three)

/7. 28 U.S. C. sec. 1605 (a) (3-5).

category of operations for which immunity is theoretically available to CAAC under the FSIA. A waiver cannot *increase* the extent of immunity!

The Treaty is silent as to the immunity of CAAC for claims which will of necessity arise from its commercial operations here. Examples are ordinary torts, contracts made here whose performance is to occur here or abroad [such as for the purchase and delivery of American-made aircraft to the P.R.C.] or contracts for personal air transportation, as herein. The Treaty, therefore, not even colorably conflicts with the standards for immunity set out in the FSIA.

The Court of Appeals correctly applied the FSIA "nexus" requirement to the claims for immunity by CAAC and correctly found that nexus in the making of the contracts of carriage in the United States.

II. THERE IS NO CONFLICT AMONG THE CIRCUIT COURTS OF APPEAL REQUIRING A DECISION OF THIS COURT.

Petitioner argues that there is such confusion over the application of the FSIA that this Court should grant certiorari in this case in order to resolve such confusion.

The truth is that there is no conflict among the Circuits which have decided cases under Section 1605, Clause One of the FSIA, the only ground of jurisdiction considered in this case by

the Court of Appeals. They all agree that if a claim has a "nexus" with commercial activities in the United States of a foreign sovereign-owned commercial entity, then there is no immunity from jurisdiction. *Compare*: *Vencedora Oceanica Navigacion v. Compagnie Nationale Algerienne*, 730 F.2d 195 (5th Cir. 1984), *reh'g. denied*, 734 F.2d 1479 (5th Cir. 1984); *Gilson v. Republic of Ireland*, 687 F.2d 1022, 1027 n.22 (D.C.Cir. 1982); *Velidor v. L/P/G/ Benghazi*, 653 F.2d 812, 820 (3rd Cir. 1981), *cert. dismissed*, 455 U.S. 929 (1982); and *Sugarman v. Aeromexico, Inc.*, 626 F.2d 270 (3rd Cir. 1980).

The Petitioner has not cited one case in a Court of Appeals which has used a different rationale, or decided a factually similar case differently; and has cited only one, unreported District

Court case on apparently similar facts where an opposite result was reached.

This status of agreement among the Circuits does not warrant review of this case by this Court.

The Second Circuit in its decision herein expressly followed both the rationale and the results of factually similar cases involving foreign sovereign-owned airlines in the Third and Fifth Circuits. *Compare, Arango v. Guzman Travelers Advisors Corp.*, 621 F.2d 1371 (5th Cir. 1980); and *Sugarman v. Aeromexico, Inc.*, 626 F.2d 270 (3rd Cir. 1980).

The decision below is consistent with the rationale of other Second Circuit cases. *Compare, Ministry of Supply, Cairo v. Universe Tankships,*

Inc., 708 F.2d 80 (2d Cir. 1983); *Texas Trading & Milling Corp. v. Federal Republic of Nigeria*, 647 F.2d 300 (2d Cir. 1981); and *Gemini Shipping v. Foreign Trade Org'n.*, 647 F.2d 317 (2d Cir. 1981); and with the principles and rationales this Court expressed in *Verlinden B.V. v. Central Bank of Nigeria*, 461 U.S. 480 (1983).

In the other foreign sovereign-owned airline cases cited by the Petitioner, in which immunity was upheld, *the passengers had not purchased their contracts of carriage from the foreign sovereign-owned airline in the United States*; the Court of Appeals emphasized that this was an important basis for its decision: "We repeat that the fact that Barkanic and Fox were not guaranteed passage on a particular domestic flight in China is irrelevant since the tickets

involved here were bought and paid for in the United States and available and used for passage on the fatal flight." Opinion, page 7a.

The Court of Appeals, on this basis, rightly distinguished these cases, *Tigchon v. Island of Jamaica*, 591 F.Supp. 765 (W.D. Mich. 1984); *In re Air Disaster at Riyadh Airport*, 16 Av. Cas. (CCH) para. 17,880 (D.D.C. 1981); *Tote v. Iberian International Airlines*, 649 F.Supp.41 (E.D.Pa. 1986), and the early FSIA case of *Harris v. V.A.O. Intourist, Moscow*, 481 F.Supp. 1056 (E.D.N.Y. 1979). In *Harris*, a non-airline case, decedents were killed in a hotel fire in Moscow. The defendant hotel agency was not the same agency which had solicited American tourists in the United States, and the decedents had contacted Intourist Moscow in the Soviet

Union to book his travel there directly. Thus, *Harris* and this case differ in that in *Harris* the tortfeasor had done no commercial activity in this country and the commercial relationship between the decedent and the defendant did not originate in dealings here.

The Circuit Courts of Appeal have done what the drafters of the FSIA intended: they have created a consistent rationale and a uniform body of law from cases brought under the FSIA.

Since there is no conflict among the Circuit Courts of Appeal, this Court should not grant the Petition for Certiorari.

III. THE COURT OF APPEALS WAS CORRECT THAT BY ISSUING TICKETS AND ACCEPTING PAYMENT FOR PASSAGE ON THE ACCIDENT FLIGHT, THE AIRLINE CONTRACTED WITH THE DECEDENTS IN THE UNITED STATES, AND THAT SUCH CONTRACTS WERE THE NEXUS REQUIRED BY THE FSIA.

1. There Was A Contract for Passage Made in the United States.

Both the District Court and the Court of Appeals rightly found that CAAC contracted with Pan American World Airways to be its General Sales Agent in the United States. The General Sales Agency Agreement expressly and unambiguously empowered Pan Am to appoint ticket agents to issue tickets for passage over the routes of CAAC and to receive revenue for flights on CAAC.

The District Court and the Court of Appeals both found that Barkanic and Fox were traveling aboard Petitioner's aircraft pursuant to tickets which had been issued by Vanslycke & Reeside Travel Agency in Washington, D.C.

The payment of the fares to CAAC in Washington was consideration for a commercial service to be performed by a commercial agency in China. No further compensation was paid besides that which was paid in Washington.

CAAC admitted that it was CAAC policy to accept such tickets, that CAAC received the payment for the decedents' passage which it had set and that CAAC accepted the United States-issued tickets for boarding [CAAC itself produced copies of the tickets which

were surrendered by the decedents in order to board the accident flight].

Thus, the Court of Appeals was correct in its finding that there was a contract formed in the United States, and that:

> CAAC honored the contract it had entered into through the agency of Pan American and the Washington, D.C., travel agent by accepting the U.S.-issued tickets for the passage of the decedents on the date in question... Had, for example, the Chinese airline declined to carry Barkanic and Fox at all, they certainly would have had an action for breach of contract. It follows that there is a sufficient nexus between the airplane crash and the commercial

activity carried on by CAAC in this country.

Opinion, page 6a.

Assuming, *arguendo*, that the ticket agent in this case was the agent of the passengers, there were still contracts of carriage between the passenger and the carrier since the tickets were paid for and delivered. *Block v Compagnie Nationale Air France*, 386 F.2d 323, 332 & 332 n.27 (5th Cir. 1967).

2. The "RQY" Reservation Status Is Irrelevant.

As issued in the United States the tickets' reservation status box read "RQY" and not "OK". This only meant that the airline did not covenant to fly the decedents on flight 1508 of

January 18, 1985, the flight which was originally listed. But it did contract to fly them between Nanjing and Beijing and in fact it honored those contracts by accepting the U.S.-issued tickets for the passage of the decedents between those points on January 18, 1985.

No novation of the contract of carriage occurred in China. The accident flight occurred on the same day, on the same airline, and on the same route as that which was recited on the tickets as they were issued in Washington. The only change was the number of the flight, a circumstance completely within the control of the airline.

If the contract had been for the carriage of goods, rather than human beings, and those goods had been

destroyed in the crash, there can be no doubt that jurisdiction would lie for breach of contract in the United States, regardless of the "reservation status" of the tickets. If CAAC had flatly refused to accept the U.S.-issued tickets for the passage between Nanjing and Beijing, there can be no doubt that on their return the decedents would have had the right to sue CAAC for damages.

There is no rational basis for granting FSIA jurisdiction for the carriage of goods and for failure to carry human beings, but for refusing it for the negligent carriage of human beings.

3. The Contract Between the Decedents and the Airline Was A Sufficient Nexus With the Claims Asserted in This Case.

The FSIA denies immunity to those cases "based upon commercial transactions performed in whole or in part in the United States....", House Judiciary Committee, *Jurisdiction of United States Courts in Suits Against Foreign States*, H.R. Rep. No. 1487, 94th Cong., 2d Sess. 17; See, 28 U.S.C. sec. 1605 (a) (2) (Clause One).

The FSIA does not require that there be, as there was in this case, a contractual relationship between the parties formed in the United States, before jurisdiction under Clause One will lie. As long as there is a connection or nexus with commercial

activity in the United States, jurisdiction lies for claims under both contract and tort theory, including claims where the specific misconduct complained of occurs outside of the United States. *Vencedora, supra*, 730 F.2d at 202; *Ministry of Supply, Cairo v. Universe Tankships, Inc.*, 708 F.2d 80 (2d Cir. 1983).

Since the commercial activity in the United States providing the nexus need not be as significant as a contract between the parties, *Cairo, supra, a fortiori*, when there is such a contract, as here, the nexus is more than sufficient.

IV. AN AFFIRMANCE BY THE COURT OF APPEALS WOULD HAVE SERIOUSLY DISRUPTED SETTLED LAW UNDER THE WARSAW CONVENTION AND THE FSIA

1. Warsaw Convention Law Would Have Been Disrupted.

A holding by the Court of Appeals that the "RQY" reservation status invalidated the contract of carriage would have played havoc with the settled law of jurisdiction for claims arising not only from "non-Warsaw" air transportation, but also from international carriage under the Warsaw Convention. /8.

/8. Convention For the Unification of Certain Rules Relating to International Transportation By Air, 49 Stat. 3000 et seq. (the "Warsaw Convention"). The Convention does not itself establish a contract between the parties but comes into effect after a contract for international carriage by air has been made between the passenger and the

If CAAC'S proposition, that a schedule confirmation or change abroad amounts to a novation of the contract of carriage, had been approved by the Court of Appeals, there would have been no rational basis for not extending it to Warsaw Convention cases.

According to Article 28 of the Warsaw Convention, there is jurisdiction over a claim for personal injury or death, if the plaintiff brings it, *inter alia*, "where he [the carrier] has a place of business through which the contract has been made." /9.

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airline. See, *Block v Compagnie Nationale Air France*, 386 F.2d 323 (5th Cir. 1967).

/9. The United States is now considering ratification of the Montreal Protocols to the Warsaw Convention, which, if

The phrase, "through which the contract has been made" has always been accepted to mean the place where the tickets were purchased. But if the Court of Appeals had accepted CAAC's argument in this case, to the effect that a change of flight number or reservation status effects a novation of the contract of carriage, it is certain that the many foreign government-owned airlines engaged in "Warsaw" as well as "non-Warsaw" carriage will use every

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adopted, would permit U.S. citizens to sue foreign airlines in U.S. courts regardless of whether the air transportation has any connection with the United States, so long as the carrier maintains an establishment in the United States. (DOT Order to Show Cause, JA at A-321a).

change of flight number and every other schedule irregularity, whether or not caused by the airline's own actions, to claim that the contract of carriage was made or novated where the irregularity or flight number change occurred, and not in the United States where the tickets were purchased, so as to avoid jurisdiction in the United States. This will severely disturb a settled body of law and the expectations of thousands of persons. /10.

That there were final arrangements

/10. The vast majority of non - U.S. airlines are instrumentalities of foreign governments. (DOT Order to Show Cause, JA at A-321a.) CAAC named 17 and mentioned 133 other foreign airlines which operate in the United States. (Brief of Defendant-Appellee at 32.)

for the passengers to make in China in regard to the actual boarding of a flight is true of any flight. Most carriers require that a passenger arrive at a minimum time before scheduled departure or forfeit his or her reservation (but not his or her right to carriage). It is a common practice in international flights for an airline to require a passenger to reconfirm a reservation for a second leg of a journey after a stopover enroute. That is, the passenger is supposed to make "final arrangements" in regard to the reservation on the second flight.

A decision for the Petitioner by the Court of Appeals would have meant that in every case involving an overseas flight, where a passenger does not fly on the originally scheduled flight, but uses his U.S.-issued ticket on another,

and is injured or killed, the airline could claim that the contract was made not in the United States but in the country where the accident flight originated. For international flights, this would deprive the plaintiff of the Article 28 grant of jurisdiction where "the contract has been made" and clearly would be an unacceptable result, contrary to the meaning of the Convention and to ordinary commercial usage. It is just as unacceptable in this case.

2. **FSIA Law Would Have Been Disrupted.**

To allow the Petitioner immunity on these facts would permit any commercial agency of a foreign government which contracts and receives consideration in the United States, to make some

immaterial change at the place of performance, and assert that a novation has occurred and that it is immune from suit in the United States, where it negotiated the contract and was paid. This is an affront to the restrictive theory of sovereign immunity and the language and purposes of the FSIA.

V. THE DECISION OF THE COURT OF APPEALS IS CONSISTENT WITH THE JURISDICTIONAL PROVISIONS OF THE WARSAW CONVENTION, GOVERNING INTERNATIONAL FLIGHTS.

Article 28 of the Warsaw Convention is a decision by the international community that *there is a sufficient nexus* between the commercial activity of the carrier in the United States and claims arising out of the carriage purchased, to permit suit in the forum where the contract of carriage is made.

By finding that there was a sufficient nexus with the commercial activities of CAAC in the United States for these claims, since the tickets were purchased here, the Court of Appeals settled a rule which is consistent with the Warsaw Convention and thus is objective, familiar, and fair. It also fulfills the purposes of the FSIA, and should not affront the "sensitivity" of sovereigns who choose to conduct commercial activity by air, since in almost every case those sovereigns (including the P.R.C.) have adhered to the Convention.

VI. CONCLUSION

This Court should not grant the Petition. The Petitioner airline did not raise the Air Services Agreement

("Bilateral Treaty") below because it is completely silent as to sovereign immunity. The Foreign Air Carrier Permit contains a waiver, not a retention, of sovereign immunity.

There is agreement among the Courts of Appeal concerning the application of the Foreign Sovereign Immunities Act.

The Court of Appeals properly applied the Foreign Sovereign Immunities Act to the facts of this case. There is a sufficient nexus between the contracts of carriage made in the United States with the claims for wrongful death to assert jurisdiction.

An affirmance of the District Court would have played havoc with the settled law of jurisdiction under both the Warsaw Convention and the Foreign Sovereign Immunities Act.

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